

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL102308)**

**INTRODUCTION**

On 10/23/08, the Nevada Superintendent of Public Instruction received a complaint dated 10/20/08 from parents alleging violations in the special education program of a student with disabilities attending Clark County School District (CCSD). An investigation team was appointed to examine the allegations that the CCSD: 1) did not allow the parent to attend and made no attempt to allow the parent to attend the student's 3/4/08 Individualized Educational Program (IEP) meeting; 2) somehow allowed the parent to waive his daughter's right to a three-year reevaluation; and 3) failed to hold an IEP meeting after the parent requested one.

The parent also made an allegation concerning his daughter being bullied at school. The parent was notified that the Nevada Department of Education (NDE) did not have jurisdiction through the special education complaint process to investigate this allegation and that the responsibility to investigate the allegation fell to the jurisdiction of the district to investigate. The parent was provided with the local contact person at the district to pursue this allegation.

Prior to the complaint being filed, the parent had filed a request for a due process hearing dated 9/8/08. The allegations in the request for a due process hearing included the allegations raised in this written complaint. Federal regulations at 34 CFR §300.152(c)(i) state "If a written complaint is received that is also the subject of a due process hearing under §300.507 or §300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing." Therefore, the complaint investigation was set aside pending the resolution of the due process hearing. On 11/4/08 the district received a letter from the parent withdrawing the request for the due process hearing. The parent's request for a complaint investigation was not withdrawn and the sixty-day timeline for resolving the complaint commenced on 11/4/08.

**COMPLAINT ISSUES**

The allegations articulated in the complaint, and further clarified by a review of the documents and interviews, raised the following issues under the jurisdiction of the NDE:

- Issue 1: Whether CCSD complied with federal and state regulations to provide an opportunity for parent participation in the development of the student's 3/4/08 IEP.
- Issue 2: Whether CCSD complied with state regulations to conduct a three-year reevaluation.
- Issue 3: Whether CCSD responded to the parent's August 2008 request for an IEP meeting in accordance with federal requirements.

**PERSONS INTERVIEWED**

The investigation team interviewed the following persons:

- Parent
- School psychologist
- 2007/2008 special education teacher
- Northwest region director
- Northwest region behavior mentor
- Special education liaison

- Compliance monitor

## **DOCUMENTS REVIEWED**

The documents reviewed by the investigation team included the following:

1. Meeting notices for the 3/4/08 IEP meeting dated 2/4/08 and 2/6/08
2. 3/4/08 IEP
3. Statement of Need for Reevaluation dated 3/4/08
4. 3/5/08 Prior Written Notice (PWN) to implement IEP dated 3/4/08
5. 5/20/08 IEP
6. Student's status record dated 10/23/07 through 9/11/08
7. Former principal's documentation notes dated 10/20/07 through 10/21/08

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300

## **FINDINGS OF FACT**

This investigation involved a middle school special education student with autism. A review of documents, as well as interviews with the parent, the school psychologist, 2007/2008 special education teacher, the northwest regional director, the northwest region behavior mentor, the special education liaison and the compliance monitor revealed the following facts.

An annual IEP meeting was held on 3/4/08. Meeting notices sent to the parents on 2/4/08 and 2/6/08 indicated that the purpose of the meeting was to develop the student's annual IEP and to reevaluate the student's special education needs and continued eligibility for special education. A draft IEP was sent home to the parents on 2/26/08 prior to the 3/4/08 IEP meeting. The parents reviewed the draft IEP and returned it with comments and suggestions on 2/27/08.

Due to statements made by one of the parents on 2/28/08 that caused some school staff members to be concerned for their safety, one of the parents was "trespassed" from the school on 2/29/08. The compliance monitor reported that a "trespassed" parent cannot come on the school campus. On 3/3/08 the parent was called by the principal and told that while he could not come on campus he could participate in the 3/4/08 IEP by telephone. The other parent was invited to attend in person and chose not to attend. Further references to "parent" in this complaint investigation report refer to the "trespassed" parent.

On 3/4/08, the parent was contacted via speakerphone and the IEP meeting was convened. At the beginning of the 3/4/08 IEP meeting, the parent indicated that he was having difficulty hearing on the speakerphone. The district then brought in an individual phone to the room in which the IEP committee was gathered so that whomever was speaking could speak directly into the individual phone and this was explained to the parent. The parent said he would not participate in the IEP meeting by phone and hung up. The 3/4/08 IEP meeting proceeded without the parent. The parent reported to the complaint investigation team that he had no problem hearing on individual phones, but did have a problem hearing with some speakerphones.

The 3/4/08 IEP meeting began with a discussion of whether a three-year reevaluation was needed. The student's prior three-year evaluation was conducted on 5/2/05. A "Statement of Need for Reevaluation" form, completed by the 3/4/08 IEP committee, indicated that the IEP committee, including a parent, had determined that the three-year reevaluation was unwarranted and that the decision was made "on the basis of review and consultation with the parents." The compliance monitor, the school psychologist, the

northwest region director, the northwest region behavior mentor and the parent reported that neither parent was consulted or involved in the decision that the three-year reevaluation was unwarranted.

The parent reported to the complaint investigation team that although he subsequently agreed with the decision of the 3/4/08 IEP committee that the three-year reevaluation was not necessary and he did not want it conducted, he objected to the fact that the Statement of Need for Reevaluation incorrectly stated that he had been consulted and had waived his right to have the three-year reevaluation conducted.

The 2008/2009 school year began on 8/25/08. The principal's notes indicate that the parent requested an IEP meeting on 8/25/08 to discuss transportation concerns he had. The parent reported that he requested the IEP meeting on 8/21/08 or 8/22/08. The parent filed a request for a due process hearing on 9/8/08. The request for the due process hearing included an allegation that the district had not responded to the request for an IEP meeting. The district reported that it put the scheduling of an IEP meeting on hold pending the resolution of the due process hearing proceedings. No prior written notice was provided to the parent refusing the parent's request to convene an IEP meeting. Subsequent to the filing of this complaint, the due process hearing request was withdrawn, and an IEP meeting was held on 11/26/08.

In addition, the compliance monitor, the northwest regional behavior mentor and the northwest region director reported that on 11/25/08 the district provided training for staff at the student's school on the requirements to conduct three-year reevaluations including the requirements which pertain when the parents and the district agree the three-year reevaluation is not necessary.

### **CONCLUSIONS OF LAW AND REASONS**

Issue 1: Whether CCSD complied with federal and state regulations to provide an opportunity for parent participation in the development of the student's 3/4/08 IEP.

This complaint concerned allegations that the district did not allow the parent to attend, and made no attempt to allow the parent to attend, the student's 3/4/08 IEP meeting.

Federal regulations at 34 CFR §300.501(b)(1) require that "...parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to— (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child."

Federal regulations at 34 CFR §300.322(c) require that in considering other methods to ensure parent participation, "If neither parent can attend an IEP meeting the public agency must use other methods to ensure parent participation, including individual or conference telephone calls... ."

State regulations at NAC §388.281(11) state that "If the reasonable efforts of the public agency to involve the pupil's parents are unsuccessful, the parents shall be deemed unavailable and the public agency shall develop an individualized educational program without the parents."

In this case the parents were entitled to an opportunity to participate in the 3/4/08 IEP meeting. One parent was offered the opportunity to attend by person and declined to attend. The other parent was unable to attend the 3/4/08 IEP meeting in person due to the district policy with regard to a trespassed parent, and the district used alternative methods to provide the opportunity to participate, including the opportunity to participate through both individual and conference calls. At the outset of the 3/4/08 IEP meeting, parent reported difficulty hearing via the speakerphone, so the district obtained an individual telephone for improved communication with the parent. However, the parent then stated he would not participate via telephone and hung up.

The complaint investigation team determined that these district efforts to involve the parents were reasonable. The district was entitled to proceed without the parents being present after the district made reasonable efforts to involve the parents and the parents chose not to participate.

*Therefore, the investigation team concluded that the CCSD complied with federal and state regulations to provide an opportunity for parent participation in the development of the student's 3/4/08 IEP.*

Issue 2: Whether CCSD complied with state regulations to conduct a three-year reevaluation.

This complaint concerned an allegation that the district somehow allowed the parent to waive the student's right to a three-year reevaluation.

State regulations at NAC §388.440(1)(b) require that a public agency shall ensure that a reevaluation of each pupil with a disability shall occur "At least once every 3 years, unless the parent and an authorized representative of the public agency agree that a reevaluation is not necessary."

In this case, a three-year reevaluation was required to be conducted by 5/2/08. There is consensus that the parents were not consulted or involved in the decision that the three-year reevaluation was not necessary. In the absence of an agreement with the parent that the three-year reevaluation was not necessary prior to the date that it was due, the district was obligated to conduct the three-year reevaluation, but no reevaluation was conducted.

*Therefore, the investigation team concluded that the CCSD did not comply with state regulations with regard to the conduct of a three-year reevaluation.*

Issue 3: Whether CCSD responded to the parent's August 2008 request for an IEP meeting in accordance with federal requirements.

This complaint concerned an allegation that the district refused to grant the parent an IEP meeting.

Appendix A to the IDEA 1999 Regulations, Question 20 clarifies that a school district must provide parents with written notice of its refusal to convene an IEP meeting requested by the parents: "... If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the child or the educational placement of the child, and the agency refuses to convene an IEP meeting to determine whether such a change is needed, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student."

There are no timelines established in federal or state law between the date an IEP meeting is requested and the date when the district must respond to the request with notice of its proposal or refusal to conduct the IEP meeting. Therefore, a standard of reasonableness under the circumstances applies to the timeline between the request for an IEP meeting and the provision of written notice of the district's proposal or refusal to conduct the meeting.

Federal regulations at 34 CFR 300.503 describe the specific requirements for providing parents with written notice regarding a school district's proposals or refusals to initiate or change the identification, evaluation, or educational placement of the child or the provisions of FAPE to the child."

In this case, the parent requested an IEP meeting sometime between 8/21/08 and 8/25/08 to discuss transportation issues. The parent subsequently requested a due process hearing on 9/8/08, and the school district reported that it put the scheduling of an IEP meeting on hold pending the resolution of the due process hearing proceedings. A decision to put the scheduling of a meeting "on hold" is in effect a refusal, particularly when the resolution of the due process hearing proceedings might not occur for a period of months. Although the pendency of the due process hearing might have constituted a reasonable basis for declining to convene the IEP meeting requested by the parent until the conclusion of

due process proceedings, the school district did not provide the parent with written notice, within a reasonable amount of time following the parent's request, of its refusal to convene an IEP meeting.

*Therefore the investigation team concluded that CCSD did not comply with federal regulations regarding provision of written notice of its refusal to the parent in response to the parent's August 2008 request for an IEP meeting.*

#### **ORDER FOR CORRECTIVE ACTION**

The CCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not comply with state regulations to conduct the three-year reevaluation, and the district did not comply with federal regulations to provide parents written notice of any refusal to conduct an IEP meeting requested by parents.

The complaint investigation team recognizes that the parents declined the district's offer to conduct a re-evaluation and therefore there is no need to order that the student be reevaluated based on the non-compliance in this case. Further, an IEP meeting was held on 11/26/08, so there is no need to make an order regarding the parent's request to convene an IEP meeting.

#### **Professional Development/Training**

Within 30 days of receipt of this report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must include professional development for relevant CCSD administrators and staff regarding state regulations to conduct three-year reevaluations including the exception when the parent and the district agree it is not necessary. The complaint investigation team recognizes that this training has been completed for some CCSD administrators and staff following the filing of this complaint and that training may be incorporated into the CAP. The proposed CAP must also include professional development for relevant CCSD administrators and staff regarding the provision of written notice to parents when the district refuses to conduct an IEP meeting when requested to do so by parents.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.